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BEFORE THE ARIZONA CORPORATION COMMISSION

2014 APR 10 P 12:26

COMMISSIONERS

BOB STUMP - Chairman
 GARY PIERCE
 BRENDA BURNS
 BOB BURNS
 SUSAN BITTER SMITH

ARIZONA CORPORATION COMMISSION
 DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

APR 10 2014

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IN THE MATTER OF THE APPLICATION)
 OF JOHNSON UTILITIES, LLC)
 DBA JOHNSON UTILITIES COMPANY FOR)
 APPROVAL OF SALE AND TRANSFER)
 OF ASSETS AND CONDITIONAL)
 CANCELLATION OF ITS CERTIFICATE OF)
 CONVENIENCE AND NECESSITY.)

Docket No.: **WS-02987A-13-0477**

**TOWN OF FLORENCE'S
 RESPONSE TO SWING FIRST'S
 MOTION TO SUSPEND
 PROCEDURAL SCHEDULE**

The Town of Florence, Arizona ("Town") hereby responds to intervenor Swing First Golf, LLC's ("Swing First") Motion to Suspend Procedural Schedule.

Swing First has alleged that the Town failed to timely intervene in this matter. This is incorrect, as the Procedural Order of March 14, 2014 made the deadline to intervene April 15, 2014. But what Swing First's erroneous allegation highlights is that the Town was ordered to file direct testimony by March 28, 2014, prior to having made a legal decision authorizing Town staff to intervene, and therefore, while still unrepresented at the proceedings. Had the Town been present, even without such authorization, it would have urged that the deadline to file testimony be set in a manner which would have allowed sufficient time to place the matter of intervention before the Council and still have sufficient time to file its direct testimony in a timely manner. But the Town neither intends, nor desires, to "trump due process" as suggested by Swing First.

It is worth noting that the Town, as a governing body which is both corporate and politic, can neither initiate, react to, nor interpose itself in legal proceedings with the speed and agility of a private enterprise such as Swing First. The decision to involve the Town in legal proceedings

1 cannot be made unilaterally by Town staff; in fact, such a decision can only be made by the
2 Town Council, at a public meeting conducted in accordance with the Open Meeting Law, A.R.S
3 § 38-431 et seq.

4 Further, a decision whether to place a matter on a Council meeting agenda for
5 consideration by the Town Council, in the first instance, is one which can only be made by the
6 Town Manager, a Council member acting through the Town Manager, or the Mayor acting
7 through the Town Manager. Florence Resolution No. 1273-10, Section § 7.

8 The Procedural Order of April 4, 2014 directed the Town to file an executed copy of the
9 asset purchase agreement by April 15, 2014. Unfortunately, the complexity of the undertaking,
10 the requirements of the Open Meeting Law, as well as the fact that voter authorization for the
11 proposed acquisition will not be obtained, if at all, until the May 20, 2014 election results are
12 known, makes this unlikely.

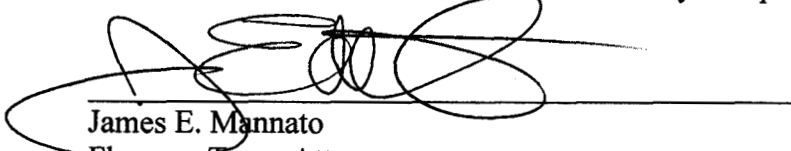
13 Nonetheless, a draft of the proposed Agreement has been lodged as an attachment to the
14 direct testimony of the Florence Town Manager. Although Town staff have not yet
15 recommended the draft agreement for approval by the Town Council, the key points: 1) rates;
16 2) customer deposits; and 3) line extension agreements - are either addressed in the draft
17 agreement or in the Town Manager's direct testimony or both, and are unlikely to change in the
18 future. Although an inquiry into the entire transaction as represented by the proposed Agreement
19 may be of interest to the parties, the scope of the proceedings in this matter does not require such
20 an inquiry by the Commission. According the Arizona Attorney General, such inquiries should
21 properly be limited to whether the asset transfer would leave any person without service or
22 would otherwise work a detriment to the rights of the public. Ariz. AG Opinion No. 62-7. The
23 Town and the Applicant have endeavored to meet with Staff in order to reach an understanding
24 of the issues which are of greatest importance, and the Town believes that it has addressed those
25 issues in the testimony of Town Manager Charles A. Montoya.

26 In the original procedural order of March 14th, the court allowed Staff and intervenors 28
27 days after the Town deadline to file their direct testimony. In the procedural order of April 4th,
28 the court modified the deadlines to reduce this to 24 days. However, the Town was able to file its

1 direct testimony on April 9th. This effectively allows Staff and intervenors 30 days to file their
2 direct testimony on May 9th. Therefore, Swing First's assertion that it has been "severely
3 prejudiced", especially in light of the fact that the Town Manager's direct testimony amounts to
4 9 pages of a non-technical nature, seems exaggerated. In addition, Swing First's suggestion that
5 the Commission would be "moving customers out of the frying pan and into the fire" unless the
6 Motion to Suspend were granted is disingenuous, given the Town's lengthy history of
7 successfully operating water and wastewater utility systems.

8 In closing, the Town does not agree that the Procedural Schedule needs to be suspended,
9 but would join in the recommendation by intervenor RUCO that a procedural conference be
10 scheduled if necessary.

11 RESPECTFULLY SUBMITTED this 10th day of April, 2014.

12 
13 _____
14 James E. Mannato
15 Florence Town Attorney
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18
19

20 Original and thirteen (13) copies filed this 10th day of April, 2014, with:

21 Arizona Corporation Commission
22 Docket Control
23 1200 W. Washington Street
24 Phoenix, AZ 85007

25 A copy of the foregoing document was mailed this
26 10th day of April, 2014 to:

27 Lyn Farmer, Chief Administrative Law Judge
28 Hearing Division
Arizona Corporation Commission
1200 W. Washington Street

1 Phoenix, AZ 85007

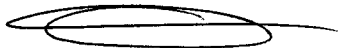
2 Janice Alward, Chief Counsel
3 Legal Division
4 Arizona Corporation Commission
5 1200 W. Washington Street
6 Phoenix, AZ 85007

7 Steve Olea
8 Utilities Division
9 Arizona Corporation Commission
10 1200 W. Washington Street
11 Phoenix, AZ 85007

12 Jeffrey W. Crockett
13 Brownstein Hyatt Farber Schreck, LLP
14 One East Washington Street, Suite 2400
15 Phoenix, AZ 85004-2202
16 Attorney for Johnson Utilities, LLC

17 Dan Pozefsky
18 Chief Counsel
19 RUCO
20 1110 W. Washington Street
21 Phoenix, AZ 85007

22 Craig A. Marks
23 Attorney at Law
24 10645 N. Tatum Blvd., Suite 200-676
25 Phoenix, AZ 85028
26 Michele Van Quathem
27 Ryley Carlock & Applewhite
28 One North Central Avenue, Suite 1200
Phoenix, AZ 85004



By: Stephanie Lamas